

REMARKS

Applicants respectfully request reconsideration of the Examiner's refusal to recognize priority based on an application filed in Russia on August 18, 2003. Applicants have previously filed and been granted a Petition for Revival of international application no. PCT/EP 2004/009218. A copy of the granted petition is attached hereto. The grant provides that "International application PCT/EP2004/00918 is being revived for purposes of continuity only." (see paragraph three of Decision on Petition for Revival Under 37 CFR 1.137(b)).

Therefore, applicants' priority based on the Russian application filed on August 18, 2003, is reinstated. It follows that the Rykova et al, reference cited by the Examiner to support her rejection of the Claims under 35 U.S.C. § 102(b) is no longer applicable.

The Examiner rejected cancelled Claims 1-4 based on 35 U.S.C. § 112, first paragraph. This rejection is moot since applicants have cancelled Claims 1-4 and substituted new Claims 5-14, which are clearly enabled in the specification.

The Examiner further rejected Claims 1-4 under 35 USC § 112, second paragraph, as being indefinite. This rejection is moot in view of applicants' canceling of Claims 1-4 and substituting new Claims 5-14 that are definite in describing the claimed methods.

The Examiner rejected Claims 1-4 based on Rykova et al. This reference is not appropriate since applicants' priority date of August 18, 2003 based on a Russian application, antedates the 2004 date of Rykova et al. See applicants' attached Decision on Petition for Revival Under 37 C.F.R. § 1.137(b)

The Examiner also rejected Claims 1 and 4 based on Gocke et al. Claims 1 and 4 have been cancelled. Applicants distinguish this reference from their new Claims 5-14, as follows:

I) With respect to Claims 5, 6, 8, 10 and 12, Gocke et al, describes the isolation of a cell having a mutated oncogene by digesting an amplified nucleic acid fraction with an enzyme that specifically cleaves nucleic acid fragments in the fraction within the nucleotide sequences of nucleic acid fragments. Gocke et al, does not disclose applicants' step of isolating extra-cellular nucleic acids bonded to the surface of cells of a cellular fraction and determining by PCR, multiplex PCR, hybridization or sequencing, whether at least two nucleic acids are present among the isolated extra-cellular nucleic acids.

II) With respect to Claims 7, 9, 11 and 13, Gocke et al, does not disclose the specific diagnostic marks.

III) With respect to Claim 14, Gocke et al, does not disclose the method of isolating the extra-cellular nucleic acids bonded to the cells of the cellular fraction as set forth in a) to f). Therefore, the rejections of Claims 5-14 would not be supported by Gocke et al, under 35 USC § 102(b).

Applicants' are attempting to have the DE reference cited in the Information Disclosure translated and will provide same when it becomes available.

In view of all the above, it is believed that Claims 5-14 are in condition for allowance. Such action is earnestly solicited.

Respectfully submitted,



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In re Application of :
SCZAKIEL *et al* :
U.S. Application No.: 10/576,005 :
Filing Date: March 28, 2006 :
Attorney Docket No.: 195.66 :
For: METHOD FOR EARLY DETECTION :
AND MONITORING DISEASES BY :
ANALYSIS OF CELL-SURFACE- :
BOUND NUCLEIC ACIDS :

**DECISION ON
PETITION FOR REVIVAL
UNDER 37 CFR 1.137(b)**

This decision is in response to applicants' "Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally" filed on March 28, 2006. Applicants' petition is hereby **GRANTED** as to the present U.S. national application as follows:

International application PCT/EP2004/009218 became abandoned as to the United States of America for failure to pay the basic national fee by January 18, 2006. The filing of the above-captioned continuation-in-part application under 35 U.S.C. 111(a) on March 28, 2006 is accepted as an appropriate response under 37 CFR 1.137(b). The \$1500.00 petition fee has been paid. Applicants' statement regarding the delay satisfies the requirement of 37 CFR 1.137(b)(3). Thus, all requirements of 37 CFR 1.137(b) are satisfied.

International application PCT/EP2004/009218 is being revived for purposes of continuity only and since continuity has been established by this decision reviving the international application, the international application is again abandoned in favor of the present continuation-in-part application number 10/576,005.

This application is being forwarded to the Office of Initial Patent Examination for further processing under 35 U.S.C. 111(a) with a filing date of March 28, 2006.

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